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Federal Communications Commission
Washington, D.C. 20554

October 23,2002

Honorable Marion C. Blakey
Chairman
National Transportation Safety Board
Washington. D.C. 20594

Re: National Transportation Safety Board Safety Recommendation M-02-17

Dear Mr. Blakey:

Thank you for your July 3.2002 letter to Chairman Powell regarding National Transportation Safety Board (NTSB) Safety Recommendation M-02-17 (Recommendation). The Recommendation proposes that the Federal Communications Commission (Commission) require that small passenger vessels be equipped with VHF radiotelephone communications systems on board that can operate even when the vessel loses power. The Wireless Telecommunications Bureau (Bureau) administers the Commission's regulations of the Maritime Radio Services. As a result. the Chairman's Office has requested that the Bureau prepare the Commission's response to the Recommendation.

By way of background. it is our understanding that the Recommendation resulted from NTSB's investigation of the fire on board the small passenger vessel *Porr Imperial Manhattan* in the Hudson River, New **York** City, New **York.** on November 17. 2000. The *Porr Imperial Manhattan* was equipped with a VHF radiotelephone installation that became inoperative when the fire burned through the electrical cables to the pilothouse. The VHF radiotelephone on the *Porr Imperial Manhattan* was not outfitted with a reserve source of power: thus the radio became inoperable due to the resulting power failure. The NTSB concluded that the loss of VHF radiotelephone communication unnecessarily increased the risk to passengers and crewmembers aboard the *Porr Imperial Manhattan*

The Commission has been involved in the development of radio regulations for U.S. ships. including passenger ships. for most of its history. It administers vessel radio requirements that seek to promote the safety of life and property at sea. These requirements are intended to ensure that adequate radio equipment is carried on board a vessel to enable it to communicate with shore stations and other vessels, and to come to the rescue of nearby vessels in need of assistance. Ships are required to carry radio equipment to comply with the requirements of the Communications Act of 1934, as amended (Act).[1] The Act's requirements pertaining to U S . ships are generally implemented through the Commission's Part 80 rules. Small passenger vessels are vessels of less than 100 gross tons that carry more than six passengers for hire. It is our understanding that the *Port Imperial Manhattan* was a small passenger vessel. Generally, the radio equipment that our rules require a small passenger vessel to carry depends on the vessel's area of operation. The further from land the vessel travels the more radio equipment is required. Small passenger vessels that sail not more than 20 nautical miles from the nearest land and always within communication of a VHF coast station that maintains a continuous watch on VHF Channel 16 (156.8 MHz) must carry a VHF radio installation.[2] but only vessels of more than 100 gross tons must have a reserve power supply for the radio installation.[3]

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[1] *See* 47 U.S.C. §§ 351-386.

[2] *See* 47 C.F.R. § 80.905(a)(1).

[3] *See* 47 C.F.R. § 80.917. For this reason. the *Port Imperial Manhattan* was not required to have a reserve power supply.

The Recommendation proposes that the Commission require all small passenger vessels to be equipped with VHF radiotelephone communications systems that can operate even when the vessel loses power. We agree that such a requirement could increase the safety of crewmembers and passengers on passenger vessels of less than 100 gross tons. Achieving this result. however. would require the amendment of the Commission's Rules. Moreover. such amendment requires a notice and comment rule making pursuant to the Administrative Procedure Act. 5 U.S.C. § 553. Thus. it appears that the most prudent course of action at this time would be to provide interested panies. including members and representatives of the maritime community. an opportunity to make their views known and offer alternative suggestions for how to reduce the **risk** to crewmembers and passengers in the event o i a loss of power. We will endeavor to conduct such a rule making as expeditiouslv as possible. In this regard. we note that we have an ongoing proceeding regarding amendment of the Commission`s Part 80 rules. We will include the NTSB's Recommendation into the record of that proceeding. While this course of action would not result in an immediate solution, we believe that it can provide a vehicle by which we can examine'ways to address the safety needs of the small passenger vessel operators, crewmembers, and passengers in the most effective and expeditious manner.

I trust that this information is responsive to your inquiry. and consider our action complete in addressing the Recommendation.

FEDERAL COMMUNICATIONS COMMISSION

D`wana R Tem
Chief. Public Safety and Pnvate Wireless Division
Wireless Telecommunications Bureau

National Transportation Safety Board
Washington, D C 20594

Safety Recommendation

Date: July 3. 2002

In reply refer **to:** M-02-17

Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street. SW
Washington. DC 20554

The National Transportation Safen Board (Safety Board) is an independent Federal agency charged by Congress with investigating transportation accidents. determining their probable cause. and making recommendations to prevent similar accidents from occurring. We are providing the following information to urge you to take action on the safety recominendation in this letter. The Safety Board is vitally interested in this recommendation because it is designed to prevent accidents and save lives.

The recommendation addresses the issue of vessel communications. The recommendation is derived from the Safety Board's investigation of the fire on board the small passenger vessel *Porr Imperial Manhattan* in the Hudson River. New York City. New York. on November 17. 2000. and is consistent with the evidence we found and the analysis we performed.[1] **As** a result of this investigaiion. the Safety Board has issued the safety recommendations to the U.S. Coast Guard. the Federal Communications Commission. NY Waterway. and the Passenger Vessel Association. The Safety Board would appreciate a response from you within 90 days addressing actions you have taken or intend to take to implement our recommendation.

To familiarize you with the events of the accident. the U.S. small passenger vessel *Porr Imperial Manhattan* was carrying 11 people on an evening commuter run from Manhattan to Weehawken. New Jersey. when a fire broke out. The crew attempted to put out the fire with portable extinguishers. with no success. The fire burned out of control, causing the vessel to lose power and forcing the crew and passengers to abandon the interior spaces. They transferred to another NY Waterway vessel. and the burning vessel was towed to Manhattan. where the New York City Fire Department extinguished the fire. One passenger was treated for smoke inhalation. Estimated damage to the *Porr Imperial Manhattan* was $1.2 million.

[1] For further information, read: National Transportation Safety Board, *Fire on board the Small Passenger Vessel* Port Imperial Manhattan. *Hudson River New York City. New York November 17 2000.* Marine Accident Report NTSB/MAR-02/02 (Washington, DC: NTSB, 2002).

According to the master of the ***Porr Imperial*** *Manhattan*, shortly after the vessel had departed the Manhattan pier, he saw smoke coming from the engine room vent. He made a VHF radiotelephone call requesting a nearby NY Waterway vessel to standby: however. moments later. the ***Porr Imperial*** *Manhattan*'s radio became inoperative when the fire burned through the electrical cables to the pilothouse. The VHF radiotelephones on the ***Port Imperial Manhattan*** were not outfitted with an emergency source of power that enabled them to operate in the event of a power failure: no emergency backup was required for the small passenger vessel because it measured less than 100 gross tons. Federal Communications Commission (FCC) requirements at 47 CFR 80.917. "Compulsory Radiotelephone Installation for Small Passenger Boats." stipulate:

> (a) **A** vessel of more than 100 gross tons the keel of which was laid after March 1. 1957. must have a reserve power supply located on the same deck as the main wheel house or at least one deck above the vessel's main deck. unless the main power supply is so situated.

Based on its findings in this accident, the Safety Board concluded that the loss of VHF radiotelephone communication unnecessarily increased the risk to passengers and crewmembers. After losing power to the VHF radiotelephone. the *Port* ***Imperial Manhatran*** could not communicate with emergency response vessels and other river traffic. If a passenger had jumped or fallen overboard into the water. the *Porr* ***Imperial*** *Manhattan* did nor have the capability to inform other boats. including the rescue boat. which would have further endangered the person in the water. The *Port* ***Imperial*** *Manhattan* also would not have been able to inform the rescue boat about any injuries to its passengers **or** crewmembers in order to arrange for appropriate medical transport and service. Without a working radio. the ***Porr Imperial*** *Manhattan* could not even confirm the number of people on hoard. In contrast. if the *Porr* ***Imperial*** *Manhattan* had been equipped with radio backup, the vessel's crewmembers would have been able to inform the rescue boats of the seriousness of the situation and helped coordinate the rescue operation, perhaps hastening the process.

Although the *Port* ***Imperial*** *Manhattan* is less than 100 gross tons and. therefore. not currently required by regulation to have an emergency source of power for its VHF radiotelephone. after this accident. the operator of the vessel. NY Waterway, installed battery backups for the communications systems in the wheelhouses of all vessels in its fleet. The Safety Board is concerned. however. that other operators of commuter passenger vessels measuring less than 100 gross tons might not voluntarily make such an improvement. The Safety Board is convinced that without a backup source of power to the VHF radiotelephone. the crewmembers and passengers on small commuter vessels are at increased risk in the event of a loss of power.

The National Transportation Safety Board. therefore. makes the following safety recommendation to the Federal Communications Commission:

Require that small passenger vessels have VHF radiotelephone communications systems on board that can operate even when the vessel loses power. (M-02-17)

In your response to the recommendation in this letter. please refer to M-02-17. If you need additional information, you may call (202) 314-6177.

Chairman BLAKEY, Vice Chairman CARMODY and Members HAMMERSCHMIDT, GOGLIA, and BLACK concurred in this recommendation.

Original Signed

By Marion C. Blakey
Chairman